IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.110 OF 2006

In

CHAMBER SUMMONS NO.332 OF 2005

In

SUIT NO.1775 OF 1998

Shri Chanabhai Sangabhai Waja : Plaintiff

V/s.

Shri Muktinath D. Sharma & Ors. : Defendants

And

Mrs.Nani Ratanben Chanbhai Waja & Ors. : Applicants

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Mr.Shashipal Shankar for the plaintiff.

Mr.P.S.Tiwari i/b. S.U.Pandey for the defendants.

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CORAM : S.A.BOBDE, J.

DATE : JANUARY 15, 2007.

P.C.

1. This Notice of Motion is taken out by the applicants who had taken out a Chamber Summons for being impleaded as the legal heirs of the plaintiff. That Chamber Summons was treated as dismissed in pursuance of a conditional order passed by a learned single Judge of this Court on 20.6.2005.

2. A perusal of that order shows that the learned Judge had directed dismissal of the concerned Chamber Summons without reference to Court if affidavit of service on the defendants is not filed on or before 28.6.2005. The learned counsel for the applicants states that this fact is not disputed by the learned counsel for the defendants, thought the defendants had been served and were appearing before the Court on 20.6.2005 when the conditional order was passed. It is, therefore, clear that there was no reason to treat this matter as dismissed for non-compliance with the conditional order since the defendants have already been served and were appearing on that date.

3. In these circumstances, the Notice of Motion is allowed.

S.A. BOBDE, J.